



The Limit of Term Periodization on Legislative Assembly Officials: A Constitutional Democracy Perspective

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ABSTRACT

Regulations regarding the periodization of legislative candidate requirements who has re-election for being to be legislative officials are not regulated in detail. However, this issue can refer to Article 182 of Law No.7/2017. Therefore, the term of Legislative Assembly officials in the 1945 Constitution of the Republic Indonesia in Article 19-22B concerning the House of Representatives does not at all discuss about it. In addition, Law No. 7/2017 concerning General Elections does not also regulate about how many times a legislative candidate can serve in a legislative institution. Unfortunately, there have been four changes to Law No. 27/2009 on MD3, Law No.17/2014 on MD3, Law No. 18/2018 regarding the second amendment to Law No.17/2014 concerning MD3, and the last one to Law No.13/2019 concerning MD3, none of these regulations discusses the number of term periodization on Legislative Assembly Officials. This research used descriptive qualitative methods normatively with statute approach and conceptual approach. In addition, the type of this research is juridical-normative. The data collection in this research is the data obtained will be processed and described in the form of a logical and systematic description to describe the principle of balance in a law agreement and the principle of balance contained in the Partnership Agreement itself. After the amendment of 1945 Constitution, the limitation of the term periodization only focused on the term of executive or presidential. Long-term periodization caused a polemic in authority. Absolute authority will open up opportunities for arbitrariness and corruption. Therefore, it requires to limit the term periodization on legislative institution.

Keywords: *Legislative Assembly, Limitation, Periodization*

INTRODUCTION

Legislative authority is exercised by Legislative Assembly, Regional Representative, and the Regional People's Representative, which they are elected by Indonesian community based on an election system that is held every five years. Furthermore, the election of legislative officials is regulated in Law No. 7/2014. Regulations regarding the periodization of legislative candidate requirements who has re-election for being to be legislative officials are not regulated in detail. However, this issue can refer to Article 182 of Law No.7/2017. Therefore, there are many councils in Indonesia who serve 3 or even serve 4 consecutive terms which they will tend corruption of it if there is no limitation on it.

The term of legislative officials is regulated in Law No. 17/2014 concerning of MD3 (People's Consultative Assembly, Legislative Assembly, Regional Representative, and the Regional People's Representative) which was amended by Law No. 2/2018 concerning the limit of term periodization on officials which can serve for five years. However, there are no regulations in the constitution or in Law No. 7/2017 concerning the limit of term periodization on officials which can re-election in same position. It means that there are no regulation about it, especially in Legislative Assembly. They will tend corruption of it and can act in an arbitrary or reckless manner if there is no limitation on it. According to Lord Acton statement, the power tends to corrupt, but absolute power corrupt absolutely.

The term of Legislative Assembly officials in the 1945 Constitution of the Republic Indonesia in Article 19-22B concerning the House of Representatives does not at all discuss about it. In addition, Law No. 7/2017 concerning General Elections does not also regulate about how many times a legislative candidate can serve in a legislative institution. Unfortunately, there have been four changes to Law No. 27/2009 on MD3, Law No.17/2014 on MD3, Law No. 18/2018 regarding the second amendment to Law No.17/2014 concerning MD3, and the last one to Law No.13/2019 concerning MD3, and Law No. 2/2008 concerning political parties, none of these regulations discusses the number of term periodization on Legislative Assembly Officials. The state authority is limited by constitution because constitution is a concrete criteria for state establishment. The constitution provide a description and explanation about state institution mechanism and the occupation of rights nationalities.

There are some legislative officials who had served for a long time, such as (1) Popong Otje Djundjuran (Ceuh Popong) which served for six periods from 1987-2019 periodically; (2) Tjahjo Kumolo which served for five periods from 1987-2014 periodically; (3) Setya Novanto which served for four period from 1999-2019, in which he has committed corruption for e-Ktp case; (4) Yasona

Laoly which served for three periods from 1999-2014 periodically; and (5) Fahri Hamzah which served for three periods from 2004-2019 periodically.

Besides there are no limitation of term periodization on Legislative Assembly officials, constitutional rights of every citizen are very affected by this condition. Furthermore in Election Law Article 172-179 and Article 182, the requirements for registration of legislative candidates is not regulated about the limit of term periodization on Legislative Assembly officials, while the term of executive such presidential is limited on Law. According to Law No. 8/2012 Article 51 paragraph (1) concerning the MD3 General Election, there is no requirement for a person to be able to run for re-election in the next election if he has been elected twice. Moreover, in Law No.17/2014 concerning MD3 membership, it is not explained the limitation of the periodization of legislative members (Alfauzi and Effendi 2020). The existence of rules for limiting the term of Legislative Assembly officials can be useful as a regeneration of leaders or the authority of public officials.

Regulations regarding the periodization of legislative candidate requirements who has re-election for being to be legislative officials are not regulated in detail. Therefore, the government or president have to create new norms or regulations concerning the limit of term periodization on Legislative Assembly officials, then its authority is not being abused and not absolute. The regulation about the limit of term periodization on Legislative Assembly officials required to apply for only two periods which regulate through amendments to revision of MD3 Law, and the revision of Election Law.

LITERATURE REVIEW

Popular Sovereignty

The national folk are the supreme power of a country. Popular sovereignty states that absolutely the national folk who have to represent sovereignty or hand over authority completely to the state. Furthermore, the state provided the authority to government and divided it into several parts. The concept of popular sovereignty is always be paired with the concept of democracy in which its authority is completely within national folk's hand (Jurdi 2019). Popular Sovereignty is the highest authority in decision making.

The existence of popular sovereignty, the community want their rights in elections held to create legislative assemblies that represent the voice and conscience of community and they are directly elected by community in general elections. The emergence of the values of popular sovereignty as a reaction to the theory of the king's sovereignty which created monopoly, absoluteness and deviation of authority by dividing authority into three kinds, such as legislative, executive, and judicial. Those authorities do not make the basic meaning of popular sovereignty, but actually the sovereign is the community itself. Since the

authority possessed by community, they can regulate, supervise, plan, and assess the implementation. According to Immanuel Kant statement about the theory of popular sovereignty, the purpose of establishing a state is to enforce the law and guarantee the freedom of its citizens. Popular sovereignty is regulated in the formulation of Indonesian constitution, in Article 1 paragraph (2) of the 1945 Constitution which contains sovereignty in folk's hand and is implemented according to the 1945 Constitution (Undang-undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 1 ayat (2) 2002). The realization of popular sovereignty becomes democracy through general elections.

Democracy

Democracy is a political decision-making system in which individuals obtain the right to make decisions through competition for popular votes (Santoso 2014). Democracy is the main characteristic of a modern state, therefore representative system is a mechanism to realize the normative idea that state government must be conducted according to the will of the people. The legitimacy authority depends on its ability to transform the will of the people into a higher value than the will of the state.

The essence of democracy is a system of government in limiting an authority to control each other. It is undeniable that democracy is the best system in politics and state administration. Democracy is a form of government in making political decisions that are held by citizens in representing the choices chosen through free elections in the election of legislative officials (Mahfud MD 2017).

Authority Limitation

State authority limitation is implemented horizontally and vertically. The authority is divided into several branches of state institutions by focusing on check and balances theory which controlling each other. Based on those theories, the authority is not centered in one institution which caused arbitrary acts of authority holder.

The objective of this concept is to prevent the concentration of authority in certain government institutions. The basis for authority limitation is to prevent authority abuse. Absolute authority will open up opportunities for arbitrariness and corruption. According to Lord Acton statement, the power tends to corrupt, but absolute power corrupt absolutely (Mahfud 2012).

Constitution

Constitution or it commonly known as constituent, formation and declaration of a state. Constitution is regulations regarding the form and structure of a state before and after the establishment of the state. Meanwhile, according to Jimly Asshiddiqie, constitution is a basic regulation which used as a guideline by

the nation's government. A constitution can form of a written primary law, which is commonly known as Law (Asshiddiqie 2019).

Constitutional theory requires the formation of a state on the basis of a democratic constitution based on nation's thoughts. Therefore, the constitution formed into a democratic constitution that requires the rule of law. The objective of this research is to identify the existing principles and the problem about the limit of term periodization on Legislative Assembly officials based on constitutional democracy perspective.

RESEARCH METHODOLOGY

This research used descriptive qualitative methods normatively with statute approach and conceptual approach. According to Bachtiar, statute approach is review all laws and regulations related to the legal issue under discussion (Bachtiar 2018). Statute approach is conducted to analyze all law and regulations related to discussed topic. Meanwhile, conceptual approach in this research used to identify the existing principles and the problem about the limit of term periodization on Legislative Assembly officials based on constitutional democracy perspective. According to Mahmud Marzuki statement, conceptual approach is an approach derived from the statements and doctrines that developed within legal science, in order to find ideas that produce relevant legal understandings, concepts and principles, as support in creating a legal argument and solving legal issues (Marzuki 2017). In addition, the type of this research is juridical-normative. Juridical-normative is a research that focused on existing norms in Law, court decisions, legal theory, and scholarly opinions (Bachtiar 2018).

This normative legal research is based on primary and secondary legal resources. Primary legal resource consist of legislation, official records or letters in Law, theories and doctrines. There are some primary legal resources in this research, these are (1) The 1945 Constitution of The Republic of Indonesia; (2) Law No. 7/2017 concerning General Election; (3) Law No. 2/2011 concerning Amendments to Law No. 2/2008 concerning Political Parties; (4) Law No. 13/2019 concerning Amendments to Law No. 17/2014 concerning People's Consultative Assembly, Legislative Assembly, Regional Representative, and the Regional People's Representative; (5) Law No. 42/2014 concerning Amendments to Law No. 17/2014 concerning People's Consultative Assembly, Legislative Assembly, Regional Representative, and the Regional People's Representative; (6) Law No. 17/2014 concerning People's Consultative Assembly, Legislative Assembly, Regional Representative, and the Regional People's Representative. Meanwhile, the secondary legal resource in this research is legal resource obtained from various sources, such as books, scientific journals, newspaper, and literature related to its discussed topic.

The data collection in this research is the data obtained will be processed and described in the form of a logical and systematic description to describe the principle of balance in a law agreement and the principle of balance contained in the Partnership Agreement itself.

RESULT AND DISCUSSION

Periodization Limitation

The existence of authority limitation is caused by the existence of *rechtsstaat*, judicial supremacy, and others. The characteristic of *rechtsstaat* is to limit the authority of state authority organization. Although *rechtsstaat* and judicial supremacy have different histories, they both contain limitations on authority. Legal state was established to control arbitrary actions of authority that practices an absolute power system which ignores the basic rights of community.

The thought of authority limitation is considered a must exist. Before modern constitutionalism, the concept of legal state was also known as a function of state authority which is centralized in the hands of one person. Limitation of authority imposed by law which later became the basic idea. On the other hand, the idea of a democratic state is also known as the term constitutional democracy which is associated with the concept of rule-based democracy.

The problem of authority limitation is related to the theory of authority separation and the theory of authority sharing. However, it is required to formulate authority limitation for the legislative institution in the development of Indonesian government system. The factor of the periodization limitation is preventive efforts from excessive government regulation.

The urgency of the limit of term periodization on Legislative Assembly officials is required to establish instantaneously. It is because of work performance that does not show significant progress from year to year. Therefore, it causes public disappointment and no improvement in their work performance system.

The Legal Void

The term of Legislative Assembly officials in the 1945 Constitution of the Republic Indonesia in Article 19-22B concerning the House of Representatives does not at all discuss about it. In addition, Law No. 7/2017 concerning General Elections does not also regulate about how many times a legislative candidate can serve in a legislative institution. Unfortunately, there have been four changes to Law No. 27/2009 on MD3, Law No.17/2014 on MD3, Law No. 18/2018 regarding the second amendment to Law No.17/2014 concerning MD3, and the last one to Law No.13/2019 concerning MD3, none of these regulations discusses the number of term periodization on Legislative Assembly Officials.

In the Legislative Assembly regulation No.1/2014 concerning order, it is not explicitly regulated how many times a legislative candidate can be re-elected in

the legislative membership. Furthermore, in Article 8 paragraph (4) stated that the periodization of a legislative officials is for 5 years and it ends when a new legislative officials is declare a promise. This Article is only explaining about term periodization on Legislative Assembly officials, not explain about how many times a legislative candidate can be able to run for re-election in the next election if its term ended. Therefore, it causes the absence of provisions on the limitation of periodization. It is not uncommon to see most of Legislative Assembly official who served up to three or four terms and its effect caused long-term periodization tends to be misapplied. Basically, the constitution stipulates that every citizen has the right to have equal opportunities in government (Undang-undang dasar 1945 Pasal 28D Ayat (3) n.d.).

Bad Democracy Dimension

The existence of democratic legal state concept means that democracy is regulated and limited by the rule of law because the substance of law is determined in democratic ways based on the constitution. Democracy and nomocracy combine two approaches such following below:

1. Quantitative approach in democracy mechanism.
2. The logical approach of truth and legal justice based on community desire as stated in the constitution.

Nowadays, Legal state concept that described in previous description has implemented in every countries, especially Indonesia.

According to Aristotle statement, democracy is liberties of every citizens in sharing authority to each other (Saebani, Beni Ahmad & Wati 2016). Our government was designed to be of the people, by the people and for the people. It means that Legislative Assembly is an institution as the aspirations and voice of the people who have a very important position in accordance with the democratic principles. Democracy will be bad if there are no limitation authority. Long-term periodization is contrary to democratic principles which require periodic replacement of authority. Therefore, it is necessary to have rules regarding the limit of term periodization on legislative institutions, especially Legislative Assembly. There are several considerations in limiting the term of Legislative Assembly Officials.

Authority Regeneration

Regeneration is the renewal of morals or the replacement of the older generation to the younger generation (Regenerasi Kepemimpinan Nasional menuju Kesejahteraan Bangsa 2012). The limitation of the term periodization legislative officials will have a positive impact because of the renewal of membership. In addition, because of the existence of limitation on term periodization legislative officials and its renewal, there are many opportunities for

the community to become members of the council. The exchange of leaders that occurs will create new leaders who are more competent and have better performance. Based on Article 25 of the Covenant on Civil and Political Rights, all citizens have equal rights and opportunities in government affairs (Susilo Bambang Yudhoyono 2005). This Article explained that if there is no limitation on the term periodization legislative officials, it will cause an imbalance between new candidates who is running as Legislative Assembly officials and defense candidates. It is caused defense candidates have adequate facilities and access to promote themselves and campaign in order to be re-elected in their positions.

The basis for the limit of term periodization on Legislative Assembly officials is to prevent authority abuse. It is considering of legislative authority institution is quite comprehensive, such as in forming legislation, state funds, and supervision. Legislative Assembly also has the right of interpellation, the right to express opinions, and the right of inquiry. In addition, Legislative Assembly is also authorized in the election of three judges of constitutional court.

Absolute Authority and Authority Abuse

According to Merriam Webster dictionary, absolute means being, governed by, or characteristic of a ruler or authority completely free from constitutional or other restraint. Meanwhile, the authority is one's capabilities to influence others to do what they command. Absolute authority or absolutism is an authority that is not limited by the constitution and law. After the amendment of 1945 Constitution, the limitation of the term periodization only focused on the term of the executive or presidential. Therefore, it requires to limit the term periodization on legislative institution. Long-term periodization caused a polemic in authority. Whereas public positions that are elected through general elections have periodization term. Even public positions that are not elected in the general election or are not included in certain party elements such as Hamlet (RW) and neighborhood (RT) also have limitations on the periodization term they lead.

Political officials such as governors, regents, and even executive institutions such as the president and his deputy who are elected through general elections have an average term of five years and there is a limit for being able to run for re-election, which is two periods. The limitation of the periodization term is intended to not lead into absolute authority and can create a dictator that leads to authoritarianism. There should be no limitation term in the legislative system regarding the limits of candidacy as a Legislative Assembly officials. If the authority is not limited, then the person will do various ways to stay and persist in that authority.

The next implication is if there are no restrictions on the term periodization of the legislative officials, then the authority will be difficult to change because the person in that institution is still the same person. This can lead to negative frames which will create corruptive frames. The corruptive frame is not only in

finance, but can also be in the political field which uses politics for personal and group interests in order to be able to serve in that authority continuously. In the legislative function, the legislative institution is the legislator. Therefore, none of them will propose that Legislative Assembly officials should be limited in the term of their periodization and it caused their authority be able to absolute and use their authority arbitrarily.

The Authority Limitation in Constitutional Democracy

The essence of constitutional democracy is individual freedom. Constitutional democracy is characterized by limited state authority and not allowed to act arbitrarily against citizens. State authority is limited by the constitution. The authority limitation is very important thing in order to realize a constitutional democracy.

There are several concepts of constitutional democracy that are emphasized in the constitution, such as (1) acceptance and recognition of the authority granted by the community to leader who had been given authority based on the provisions of the constitution or laws; (2) the implementation of popular sovereignty must be implemented in accordance with the principle of universal suffrage, and the appointment of executive authority must be implemented through democratic elections; (3) authority limitation and authority separation must be in accordance with the authority and the essence of constitution (MD 2018). Therefore, constitutional democracy is implemented not only in the European constitutional system.

Developments in the Indonesian state constitutions is also implemented the understandings of constitutional democracy and are regulated in the formulation of 1945 Constitution which was initiated at the end of the Japanese colonial in Indonesia by the founding figures of the nation. Indonesia is a state of law and the popular sovereignty is in the hands of community. This statement is regulated in Article 1 paragraph 2 and paragraph 3 of 1945 Constitution (Undang-undang Dasar 1945 Pasal 1 Ayat 2 dan Ayat 3 n.d.). In a state of law, all actions of the government and citizens must comply with the applicable law, that is the 1945 Constitution.

CONCLUSION

All Legislative Assembly Officials must be aware of the limitations in their positions because these are not suitable with the constitutional democracy principles. Since this institution named Central Indonesian National Committee (KNIP) until nowadays, there are no regulation concerning the limit of term periodization on Legislative Assembly officials. The term of Legislative Assembly officials in the 1945 Constitution of the Republic Indonesia in Article 19-22B concerning the House of Representatives does not at all discuss about it. In addition, Law No. 7/2017 concerning General Elections does not also regulate

about how many times a legislative candidate can serve in a legislative institution. Unfortunately, there have been four changes to Law No. 27/2009 on MD3, Law No.17/2014 on MD3, Law No. 18/2018 regarding the second amendment to Law No.17/2014 concerning MD3, and the last one to Law No.13/2019 concerning MD3, none of these regulations discusses the number of term periodization on Legislative Assembly Officials. In the Legislative Assembly regulation No.1/2014 concerning order, it is not explicitly regulated how many times a legislative candidate can be re-elected in the legislative membership. After the amendment of 1945 Constitution, the limitation of the term periodization only focused on the term of the executive or presidential. Long-term periodization caused a polemic in authority. Absolute authority will open up opportunities for arbitrariness and corruption. Therefore, it requires to limit the term periodization on legislative institution.

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